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LETTER FROM U S NAVY REGARDING REQUEST FOR ADDITION OF NEW STUDY AREAS
TO FEDERAL FACILITY AGREEMENT NS NEWPORT RI
3/20/2012
NAVFAC MIDLANT



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND, MID-ATLANTIC
9742 MARYLAND AVENUE
NORFOLK, VA 23511-3086

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OPTE3/18/WAJ
20 March 2012

Ms. Pamela Crump
Office of Waste Management
Rhode Island Department of Environmental Management
235 Promenade Street
Providence, Rhode Island 02908-5767

Dear Ms. Crump:

Subj: ADDITION OF NEW STUDY AREAS TO THE FEDERAL FACILITY
AGREEMENT FOR THE NAVAL STATION NEWPORT, RHODE ISLAND

This letter responds to your March 5, 2012 letter requesting that the Department of the Navy investigate locations¹ at which we have found buried building demolition debris, some of which contains asbestos containing materials (ACM), under the Rhode Island Remediation Regulations and Solid Waste Regulation rather than following the procedures of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Contingency Plan and the Naval Station Newport (NAVSTA Newport) Federal Facility Agreement (FFA). The Navy respectfully disagrees that this is the appropriate approach, for reasons discussed below.

In our previous correspondence of June 30, 2011 and August 1, 2011, we have expressed our opinion that the State regulatory authorities that you wish to enforce do not apply based on the history and conditions present at the sites in question. Even so, we share your legitimate concern that we adequately study and address site conditions to ensure protection of human health and the environment.

The Navy, the Environmental Protection Agency (EPA) Region 1 and Rhode Island Department of Environmental Management (RIDEM) discussed the discovery and nature of these asbestos sites at the 2011 Environmental Manager's Executive Committee (EMEC) meeting in August 2012. The issue of RIDEM's Letter of Responsibility (LOR) and Notice of Intent to Enforce (NOIE) was raised and discussed at this time. Nevertheless, during the EMEC meeting,

¹ The sites are the Combat Training Pool Bldg 1357CP; the Nimitz Field Lighting site; the MARDET Bldg #1112 CP site; the New Chiller Unit Bldg #1284 site; the P347 New Fitness Center site; the P-451 New POTC Barracks site, the Bishop's Rock Improvement Project site, and the P-082 Un-Manned AWS Support Facility Bldg 119 CC Stillwater Basin site.

EPA expressed interest in investigating and remediating these sites under CERCLA by bringing them into the FFA as study sites.

The EPA Region 1 recommended that seven locations where asbestos releases had occurred be added to the Newport FFA as study areas for investigation and remediation under CERCLA in a letter dated October 26, 2011, pursuant to Section 31 of the NAVSTA Newport FFA. EPA identified these areas as those that "may be a threat, or a potential threat, to human health and the environment" because of releases of asbestos, a CERCLA hazardous substance. Pursuant to Section 31.3 of the FFA, upon receipt of such a notification, the Parties to the FFA:

...shall have thirty (30) days from the date of the receipt of the notification pursuant to Paragraph 31.2 to agree whether such area shall be addressed under this Agreement as Study Area. **If an agreement on whether to address such area under the Agreement cannot be reached within thirty days, the dispute shall be immediately brought to the DRC** (Paragraph 13.4) for resolution. (emphasis added).

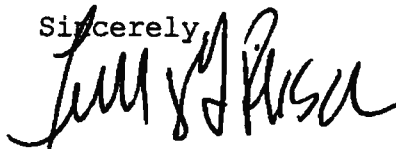
The 30-day time period following EPA's notification letter concluded on November 28, 2012. Neither the Navy nor RIDEM initiated a dispute challenging the proposed addition of these sites to the FFA. Therefore, it is the Navy's position that these sites have been properly added to the FFA's list of study areas to be addressed pursuant to CERCLA and the provisions of the FFA. Additionally, in their letter dated March 2, 2012, EPA, pursuant to Section 31.6 of the FFA, directed Navy to submit "a timetable for the completion Study Area Screening Evaluation (SASE) Work Plans for the asbestos contaminated sites identified to date."

The Navy believes addressing asbestos at these sites under CERCLA is most appropriate from a legal and technical standpoint and we are proceeding with the development of a timetable as directed by EPA in their letter of March 2, 2012. It is the Navy's position that the parties signed the FFA with the expectation that the CERCLA process would be used to address releases of CERCLA hazardous substances, pollutants and contaminants. Pertinent State standards, requirements, criteria, or limitations as defined under CERCLA 121(d)(2) that are legally "applicable" or "relevant and appropriate" would be incorporated into the process as ARARs.

We look forward to working with you and with EPA to ensure we successfully address these sites promptly and appropriately.

If you have any questions regarding this issue, please contact our Ms. Winoma Johnson at (757) 341-2008.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy A. Reisch', written over the word 'Sincerely,'.

TIMOTHY A. REISCH
Northeast IPT
Environmental Business Line
Team Leader
By direction of the
Commanding Officer

Copy to (e-mail):

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EPA Region 1 (Bryan Olson, Kymberlee Keckler)

RIDEM (Leo Hellested, Matthew DeStefano, Gary Jablonski, Richard
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NEWPORT (David Dorocz, Deborah Moore)